to the sequentially assigned wavelength (n) and routed to an optical buffer according to the wavelength assignment. If the wavelength of the FDL optical buffer is fully occupied the data packet is dropped.

Column 7, lines 32-37 disclose that a minimally occupied wavelength (n) of the FDL optical buffer is determined and the wavelength of the selected data packet is converted to the wavelength of the minimally occupied wavelength and the selected data packet is routed to the minimally occupied wavelength.

The Examiner has admitted that **Ge et al.** does not disclose dynamically assigning additional paths for the extra packets, but he has cited **Düser** for teaching this feature.

Applicants respectfully disagree. Although **Düser** discloses that "once pre-defined performance parameters are exceeded,...the buffer content is dynamically assigned to a free wavelength to prevent buffer overflow," it is respectfully submitted that the Examiner is improperly using hindsight to combine the teachings of these two references to arrive at the present invention. Although **Ge et al.** initially routes the packets to a minimally occupied wavelength, **Ge et al.** then teaches dropping additional packets, which teaches away from dynamically assigning them to other paths, as in the present invention, and as taught by **Düser**. Thus, these references are not properly combinable to teach the present invention as recited in independent claims 1-3, and 11-13, and the claims depending therefrom.

It should be noted that the claimed invention employs a semifixed initial path. With a semifixed initial path, it is possible to determine whether or not it is necessary to add a path by simply observing traffic in the semifixed initial path. In contrast, **Ge et al.** and **Düser** disclose methods that do not employ a semifixed initial path require processes such as decoding of packet headers, or signaling for establishing a path. The present invention does not require such processes.

The Examiner attempts to point out the minimally occupied wavelength of **Ge et al.** However, as explained above, **Ge et al.** requires the determination of the

Application No. 10/789,537   3   Docket No.: 60931(47762)
Amendment dated July 1, 2009
Reply to Office Action of April 2, 2009

minimally occupied wavelength. This is because the minimally occupied wavelength varies moment by moment. Therefore, it is apparent that the minimally occupied wavelength of **Ge et al.** is different from the "semifixed initial path" of the present invention. As explained, for example, in an embodiment of the present application, the semifixed initial path is always used when a packet is transmitted (page 10, lines 20-21 of the specification). In contrast, as noted above, the minimally occupied wavelength of **Ge et al.** varies moment by moment. Moreover, **Düser** merely allocates wavelengths dynamically.

Thus, the 35 U.S.C. §103(a) rejection should be reconsidered and withdrawn.

Claims 3, 5, 8, 10, 13, 15, 18 and 20 have been allowed.

In view of the remarks above, a Notice of Allowance for all pending claims 1-20 is respectfully solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105.

Dated: July 1, 2009   Respectfully submitted,

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DC 261341.1